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AUTHOR Hochberg, Allan M.; Kressel, Kenneth
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ABSTRACT

Despite the rapidly rising divorce rate and the importance of the divorce settlement agreement for the spouses' financial and emotional well-being, factors influencing the effectiveness of divorce negotiations have received very little attention. To assess the major determinants of successful divorce negotiations between divorcing spouses and their lawyers, 90 recent divorcees completed a 14 page Divorce Settlement Experience Questionnaire (DSEQ). In addition, interviews were conducted with 14 of the subjects who represented six of the best and eight of the worst divorce outcomes. The DSEQ assessed 18 separate predictor variables. Both the DSEQ and the interview surveyed the same major areas, including characteristics of the spouses and their relationship, the role of lawyers, and the quality of the divorce outcomes. A cooperative negotiating orientation by both the parties and their attorneys, resource availability, and client involvement in the negotiations were consistently associated with successful outcomes. Respondent dissatisfaction was most strongly associated with clients who viewed their emotional well-being as poor, clients who did not feel confident or knowledgeable during the settlement process, couples who were apprehensive about communicating with each other or had major differences over settlement terms, and lawyers who did not have a counselor orientation. Subjects with poor outcomes and a third of the good outcome cases were dissatisfied with the present legal system and often with the nature of their relationship with their lawyers. Several respondents advocated some form of mediation as an alternative to the present adversarial system. (JAC)

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# Determinants of Successful Divorce Settlement Outcomes

Allan M. Hochberg* and Kenneth Kressel**

Abstract

To assess the major determinants of successful divorce settlement negotiations between divorcing spouses and their lawyers, 90 recent divorcees selected from the court records of Middlesex County, New Jersey, completed a 14 page Divorce Settlement Experience Questionnaire (DSEQ). Fourteen of these subjects were also administered an hour and a half Divorce Settlement Experience Interview (DSEI). Both instruments surveyed the same major areas, including the characteristics of the spouses and their relationship, the role of lawyers, and the quality of the divorce outcomes. A cooperative negotiating orientation by both the parties and their attorneys, resource availability, and client involvement in the negotiations were consistently associated with successful outcomes. The results correspond well to the previous clinical literature in divorce as well as research in legal negotiations and social psychological studies of conflict resolution.

* Department of Psychology, Rutgers University, Busch Campus, Piscataway, New Jersey 08854.

** Department of Psychology, University College, Rutgers University, Newark, New Jersey 07102.

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## INTRODUCTION

The purpose of this study was to assess the major determinants of successful divorce negotiations. Despite the rapidly rising divorce rate and the importance of the divorce settlement agreement for the spouses' financial and emotional well-being, factors influencing the effectiveness of divorce negotiations have received very little substantive research. This study attempted to identify the variables which exert the strongest effect on divorce negotiations and assess the effects of these variables (both alone and in combination with each other) on the success of divorce negotiations.

Although reliable data are hard to come by, the available evidence generally suggests that there are major problems in the divorce settlement process and for many couples things work out poorly both during the negotiations and after the settlement agreement has been reached. The negative outcomes of divorce negotiations are suggested by several findings: (a) mediocre levels of couple satisfaction (Elgart, 1981; Fulton, 1979) and quality of the divorce settlement agreement (Cavanagh & Rhode, 1976), (b) frequency of post-divorce litigation (Cline & Westman, 1971) and (c) high levels of non-compliance with visitation (Hetherington, Cox, & Cox, 1976) and child support agreements (Cassetty, 1978; Chambers, 1979; Eckhardt, 1968; Goode, 1978; Johnson, 1978; Jones, Gordon, & Sawhill, 1976); Fulton (1979) also found high levels of non-compliance with alimony as well as visitation and child support agreements.

The literature on divorce settlement negotiations has provided a fair amount of data on the frequency with which positive and negative outcomes occur but has provided little insight as to why things work out well or poorly. There have been few studies that have gathered empirical evidence on the factors influencing divorce negotiations (e.g., Elgart, 1981; Kressel, Jaffee, Tuchman, Watson, & Deutsch, 1980; Hetherington, Cox, & Cox, 1976; Spanier and Castro, 1979; Wallerstein & Kelly, 1980). All of these studies focused on the spouses' characteristics and their relationships in attempting to explain the quality of the couples' divorce outcomes. There are even fewer studies of the lawyer's role in divorce that addressed this question.

The extant studies also have several limitations. Most use relatively small and non-random samples. Almost all assess the effects of just a few major aspects of the divorce negotiations. The present study was an attempt to more systematically assess the determinants of divorce outcomes through use of a larger sample as well as a more comprehensive set of predictor and outcome variables.

### Method

Couples were selected from the court records of Middlesex County, who had

finalized their divorce settlement agreement within the past year, (by September, 1981), had one or more dependent children, and in which both spouses had been represented by legal counsel. From this population (N=505), a total of 90 respondents participated in the study through filling out a 14 page Divorce Settlement Experience Questionnaire (DSEQ). The response rate of 18% is admittedly low, but is within the range obtained in other studies of divorcing couples (Kitson, Sussman, Williams, Zeehandelaar, Shickmanter, & Steinberger, 1982). The sample consisted of 10 couples and an additional 70 respondents for whom the participation of the ex-spouse was not obtained.

An additional 14 subjects, representing six of the best and eight of the worst outcomes, were also administered an hour and a half Divorce Settlement Experience Interview (DSEI). The interview assessed all of the predictor and outcome variables of the questionnaire as well as what changes subjects would like to see made in the legal aspects of divorce. Unless otherwise noted, the results reported below refer only to the DSEQ.

The sample was about half male and half female (51% female). The respondents were predominantly white (97%), relatively young or middle-aged (M=37.8, Sd=7.8), and either Catholic or Protestant (68%) while slightly over 25% reported being either Jewish or non-religious. The sample tended to be upper-middle class as seen by the combined income of the two spouses being close to $38,000 during the year of the divorce (M=$37,500, Sd=15,700).

## Results

The DSEQ assessed 18 separate predictor variables. With three exceptions, all these predictor variables consisted of multiple items derived through factor analysis of relevant DSEQ questions. The predictor variables included such things as husband's earning power, the quality and nature of the couple's interaction during settlement negotiations, the mutuality of the decision to divorce, and the attorney's perceived negotiating style and degree of competitive or cooperative orientation. (See Table 1 for a listing of the predictor variables).

A factor analysis of the 26 items on the DSEQ pertaining to settlement negotiation outcomes yielded two outcome factors. The first factor, "a Couple Cooperation Factor," accounted for 30% of the variance. Items which assessed the degree of compliance with the settlement accords and friendliness between the spouses as well as the perceived likelihood of a court fight loaded most highly on this factor. The second factor, "a Respondent Dissatisfaction Factor", explaining 15% of the variance, consisted of items which assessed the degree of satisfaction with the settlement agreement and legal services as well as the level of overall life satisfaction. Items which assessed the level of hostility

of any court fight between the spouses and the emotional well-being of the respondent also comprised this factor.

Using the standardized factor scores for each of the predictor variables, correlational and multiple regresion analyses were then performed on each of the outcome factor scores. These results are shown in Tables 1 through 4.

Table 1 reveals that 11 predictor variables were significantly correlated ( $p<.10$) with the Couple Post-Divorce Cooperation Factor. Post-divorce cooperation was most strongly associated with the following characteristics of the settlement process: clients who took an active negotiating stance (as opposed to letting the lawyer play the major negotiating role); couples who were not apprehensive about communicating with each other; couples who had few differences over the terms of settlement and were cooperatively oriented, couples who employed verbal reasoning rather than verbal and physical aggression; and attorneys who did not provide either competitive or cooperative advice. Post-divorce cooperation was also associated with high husband income and with persons who felt confident and knowledgeable vis a vis their spouse during the settlement process.

The multiple regression analysis which accounted for almost half (49%) of the variance in the Couple Post-Divorce Cooperation Factor Score is presented in Table 2. The table reveals that degree of lawyer cooperative advice, level of differences on the terms of settlement, couple cooperation, and degree of verbal aggression do not appear to have independent effects with post-divorce cooperation when the other variables are controlled for. However, client negotiating activity, communication apprehension, low degree of physical aggression, high degree of verbal reasoning and cooperative advice from the attorney all were significantly predictive ($p<.10$) of cooperative post-divorce outcomes. High levels of male income and respondent feelings of greater confidence and knowledge in comparison to their spouse during the settlement negotiations were also highly predictive of cooperative post-divorce outcomes.

Table 3 shows that six of the predictor variables were significantly correlated with the Post-Divorce Respondent Dissatisfaction Factor Score. Respondent dissatisfaction was most strongly associated with the following aspects of the settlement process: clients who viewed their emotional well-being to be poor; clients who did not feel confident or knowledgeable vis a vis their spouse during the settlement process; couples who were apprehensive about communicating with each other; couples who had major differences over settlement terms and were competitively oriented, and lawyers who did not have a counselor orientation.

The multiple regression analysis which explained almost half (49%), of the variance in

the Respondent Dissatisfaction Factor Score, is presented in Table 4. The table reveals that the degree clients felt confident and knowledgeable vis a vis their spouse as well as the level of couple competitition did not appear to have independent relationships with respondent dissatisfaction. However, client emotional well-being, communication apprehension, differences over settlement terms, and lawyer counselor orientation all continue to be significantly predictive of cooperative outcomes. Finally, the multiple regression analysis reveals that lower levels of lawyer cooperative advice to their clients and surprisingly lower levels of non-mutuality of the divorce decision were highly related to greater respondent dissatisfaction although neither of these two predictor variables showed significant correlations.

In order to assess the potential biasing effect from sample attrition, a multi-variate analysis of variance ("MANOVA") was performed comparing responders and non-responders on eight measures assessing conflict and thoroughness of the settlement agreement as well as demographic indices. The Manova test revealed no significant differences between the two groups, $F(8,36)=0.83$, $p<58$.

The interview data with good and especially poor outcome subjects revealed considerable dissatisfaction with the nature of their relationship with their lawyer. The most frequent complaint was that they were inadequately informed about their case (e.g., their legal rights) and not given sufficient input in matters affecting negotiations. In fact, most of these respondents advocated that clients should actively question their attorney on all matters affecting their case.

The subjects also showed considerable dissatisfaction with the present legal system. In fact, practically all of the subjects with poor outcomes and a third of the good outcome cases, offered substantive proposals for reform. Several respondents advocated some form of mediation as an alternative to the present adversarial system. Each of the respondents suggesting this proposal stressed that attorneys will often escalate conflict between the spouses in an effort to extract greater fees. In addition, the clients offered a wide variety of proposals to improve the degree of compliance with the settlement agreement. These proposals focused on stricter enforcement through the legal system such as garnishing wages or jailing the ex-spouse not complying with support payments.

## DISCUSSION

The sample size as well as the unestablished validity of most of the predictor and outcome variables make the findings tentative. The high degree of sample attrition may also have caused potential bias although the lack of significant differences between responders and non-responders makes this appear less probable. On the other hand, the

substantial portion of the variance in outcomes accounted for shows that predictor variables which exert important effects on divorce settlement outcomes have been identified. Further, the correlational and multivariate analyses pinpoint especially prominent sources of difficulty for negotiating spouses.

The positive association between a cooperative negotiating orientation and more successful divorce outcomes is broadly consistent with studies on divorcing spouses (Elgart, 1981; Kressel et al., 1980) and divorce lawyers (Kressel, Hochberg, & Meth, 1983) as well as a wide range of experimental literature in conflict resolution. Thus, the present findings also provide empirical support for the frequently held view that the orientation of the divorce lawyer can exert a significant effect on divorce outcomes.

Another key theme in the present results is the association between client passivity in the negotiating process and poorer settlement outcomes. This finding is consistent with a study by Rosenthal (1974), who found that, in personal injury cases, client outcomes were better when the lawyer-client relationship was based on a partnership of control rather than on lawyer domination and client passivity. Conflict avoidance within the divorcing couples during settlement negotiations was also one of the most potent determinants of destructive negotiation outcomes--a pattern which has previously been reported in more impressionistic, clinical studies, both in divorce (Kressel et al., 1980) and in the broader literature on family dynamics (Minuchin, 1974).

In summary, the results indicate that the determinants of divorce settlement outcomes are diverse and complex rather than solely a result of client "irrationality" or the adversarial legal system. The consistency of the present findings with a wide variety of other studies which have been of both a clinical and experimental nature is encouraging but further research is called for. A chief need is for a thorough behavioral observation of the interactions between the spouses and their attorneys throughout the course of the settlement negotiations.

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Table 1

Correlations between Predictor Factor Scores and Couple Cooperation Outcome Factor Scores

| Predictor Variable | r | p |
|---|---|---|
| Respondent emotional well-being | -.06 | .5313 |
| Spouse emotional well-being | -.05 | .6119 |
| Power Inequality | -.19 | .0777 |
| Respondent power superiority | -.14 | .2115 |
| Non-mutuality of divorce | -.08 | .4819 |
| Respondent preference divorce | .09 | .4128 |
| Male income | .34 | .0012 |
| Differences terms settlement | -.26 | .0119 |
| Motivational orientation ("MO") | -.36 | .0005 |
| Lawyer competitive advice (to client) | -.23 | .0306 |
| Lawyer cooperative advice(to client) | -.21 | .0525 |
| Lawyer counselor orientation | -.02 | .8386 |
| Client activity negotiations | -.47 | .0001 |
| Couple verbal reasoning | .29 | .0058 |
| Couple verbal aggression | -.21 | .0418 |
| Couple physical aggresssion | -.29 | .0065 |
| Spouse communication apprehension | -.42 | .0001 |
| General communication apprehension | .02 | .8401 |

Note: Higher scores indicate poorer respondent and spouse emotional well-being, a more competitive as opposed to cooperative motivational orientation, lawyers whose orientation is less similar to the counselor, and higher levels for all of the other factor scores.

Table 2

Multiple Regression Using Predictor Factor Scores to Predict Couple Cooperation Outcome Factor Scores

| Predictor variable | df | beta | Standard error | t | p | Part $r^2$ |
|---|---|---|---|---|---|---|
| Client activity negotiations | 1 | -0.23 | .12 | -1.83 | .07 | 2.5% |
| Spouse communication apprehension | 1 | -0.22 | .12 | -1.94 | .06 | 2.8% |
| Couple physical aggression | 1 | -0.22 | .12 | -1.87 | .07 | 2.6% |
| Couple verbal reasoning | 1 | 0.20 | .10 | 2.01 | .05 | 3.0% |
| Lawyer competitive advice (to client) | 1 | -0.20 | .10 | -2.01 | .05 | 3.0% |
| MO X Client activity negotitations | 1 | -0.18 | .11 | -1.63 | .11 | 2.0% |
| Male income | 1 | 0.18 | .09 | 1.98 | .05 | 2.9% |
| Respondent power superiority | 1 | -0.18 | .11 | -1.66 | .10 | 2.1% |
| MO | 1 | -0.18 | .15 | -1.23 | .22 | 1.1% |
| General communication apprehension | 1 | -0.15 | .10 | -1.48 | .14 | 1.6% |
| Lawyer cooperative advice | 1 | -0.13 | .10 | -1.34 | .19 | 1.4% |
| Couple verbal aggression | 1 | 0.12 | .14 | 0.88 | .38 | 0.6% |
| Spouse emotional well-being | 1 | 0.12 | .10 | 1.17 | .24 | 1.0% |
| Respondent emotional well-being | 1 | -0.10 | .11 | -0.96 | .34 | 0.7% |
| Non-mutuality of divorce | 1 | 0.06 | .10 | 0.66 | .51 | 0.4% |
| Differences terms settlement | 1 | 0.06 | .11 | 0.51 | .61 | 0.2% |
| Respondent preference divorce | 1 | 0.05 | .09 | 0.58 | .58 | 0.3% |
| MO X Relative power | 1 | 0.02 | .10 | 0.17 | .86 | 0.1% |
| Power Inequality | 1 | -0.01 | .11 | -0.11 | .91 | 0.0% |
| Lawyer counselor orientation | 1 | -0.01 | .09 | -0.09 | .93 | 0.0% |

Table 3

Correlations Between Predictor Factor Scores and Respondent Dissatisfaction Factor Scores

| Predictor Variable | r | p |
|---|---|---|
| Respondent emotional well-being | .36 | .0006 |
| Spouse emotional well-being | -.11 | .3198 |
| Respondent power superiority | -.29 | .0060 |
| Power inequality | -.10 | .3616 |
| Respondent preference divorce | .06 | .5546 |
| Non-mutuality of divorce | -.03 | .7796 |
| Male income | .07 | .5093 |
| Differences terms settlement | .35 | .0006 |
| MO | .36 | .0005 |
| Lawyer competitive advice (to client) | .11 | .3128 |
| Lawyer cooperative advice (to client) | -.13 | .2348 |
| Laywer counselor orientation | .30 | .0039 |
| Client activity negotiations | .06 | .5956 |
| Couple verbal reasoning | -.02 | .8278 |
| Couple physical aggression | -.06 | .5692 |
| Spouse communication apprehension | .33 | .0014 |
| General communication apprehension | .04 | .7378 |

Note: Higher scores on the Respondent Dissatisfaction Factor Score indicate greater respondent dissatisfaction.

Table 4

Multiple Regression on Predictor Factor Scores to Predict Respondent Dissatisfaction Outcome Factor Scores

| Predictor Variable | df | beta | Standard Error | t | p | Part $r^2$ |
|---|---|---|---|---|---|---|
| Respondent emotional well-being | 1 | .36 | .11 | 3.53 | .0007 | 9.1% |
| Differences terms settlement | 1 | .24 | .11 | 2.23 | .0290 | 3.6% |
| Lawyer counselor orientation | 1 | .18 | .09 | 2.00 | .0493 | 2.9% |
| Lawyer cooperatitive advice (to client) | 1 | .18 | .10 | -1.88 | .0637 | 2.6% |
| Non-mutuality of divorce | 1 | .18 | .10 | -1.92 | .0584 | 2.7% |
| General communication apprehension | 1 | .18 | .10 | 1.77 | .0811 | 2.3% |
| MO | 1 | .17 | .14 | 1.16 | .2511 | 1.0% |
| Respondent power superiority | 1 | -.16 | .11 | -1.47 | .1470 | 1.6% |
| Spouse communication apprehension | 1 | .14 | .12 | 1.25 | .2200 | 1.1% |
| Couple physical aggression | 1 | -.10 | .12 | -0.87 | .3858 | 0.5% |
| Power Inequality | 1 | -.10 | .10 | -0.97 | .3350 | 0.7% |
| Respondent preference divorce | 1 | -.08 | .09 | -0.86 | .3951 | 0.5% |
| MO X Client activity negotiations | 1 | .06 | .11 | -0.57 | .5711 | 0.2% |
| Spouse's emotional well-being | 1 | -.06 | .10 | -0.62 | .5394 | 0.3% |
| Client activity negotiations | 1 | -.05 | .12 | -0.39 | .6973 | 0.1% |
| MO X Respondent power superiority | 1 | .05 | .10 | 0.48 | .6303 | 0.2% |
| Couple verbal aggression | 1 | .03 | .14 | 0.19 | .8499 | 0.0% |
| Couple verbal reasoning | 1 | -.02 | .10 | -0.30 | .8193 | 0.0% |
| Lawyer competitive advice (to client) | 1 | .00 | .10 | 0.01 | .9964 | 0.0% |